



Atty Dkt No. 6125-0001
Client No. IB-1649

COMBINED DECLARATION AND POWER OF ATTORNEY
FOR UTILITY PATENT APPLICATION

AS A BELOW-NAMED INVENTOR, I HEREBY DECLARE THAT:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if more than one name is listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: TELESCOPED MULTIWALL NANOTUBE AND MANUFACTURE THEREOF, the specification of which

_____ is attached hereto
X was filed on _____

and assigned Serial No. 09/915,196 and was amended on _____.

I HAVE REVIEWED AND UNDERSTAND THE CONTENTS OF THE ABOVE-IDENTIFIED SPECIFICATION, INCLUDING THE CLAIMS, AS AMENDED BY ANY AMENDMENT REFERRED TO ABOVE.

I acknowledge and understand that I am an individual who has a duty to disclose information which is material to the patentability of the claims of this application in accordance with Title 37, Code of Federal Regulations, §§ 1.56(a) and (b) which state:

- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was

violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

I do not know and do not believe this invention was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said application. This invention was not in public use or on sale in the United States of America more than one year prior to this application. This invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on any application filed by me or my legal representatives or assigns more than one year prior to this application.

I hereby claim priority benefits under Title 35, United States Code § 119(e)(1) of any United States provisional application(s) for patent as indicated below and have also identified below any application for patent on this invention having a filing date before that of the application for patent on which priority is claimed:

Application No.	Date of Filing (day/month/year)	Priority Claimed
60/220,550	July 25, 2000	Yes <u>X</u> No <u> </u>

I hereby appoint the following attorneys and agents to prosecute that application and to transact all business in the Patent and Trademark Office connected therewith and to file, to prosecute and to transact all business in connection with all patent applications directed to the invention:

Dianne E. Reed, Reg. No. 31,292
J. Elin Hartrum, Reg. No. 43,663
Mark A. Wilson, Reg. No. 43,275
Louis L. Wu, Reg. No. 44,413
CUSTOMER NO. 23980

Address all correspondence to J. Elin Hartrum at:

REED & ASSOCIATES
800 Menlo Avenue, Suite 210
Menlo Park, California 94025

Address all telephone calls to J. Elin Hartrum at (650) 330-0900.

This appointment, including the right to delegate this appointment, shall also apply to the same extent to any proceedings established by the Patent Cooperation Treaty.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

First Joint or Sole inventor:

Signature: John P. Cumings Date: 10/12/01
Full Name of Inventor: John P. Cumings
Citizenship: United States of America
Residence: Oakland, California
Post Office Address: 5719 Keith Ave., Oakland, California 94618

Second Joint inventor:

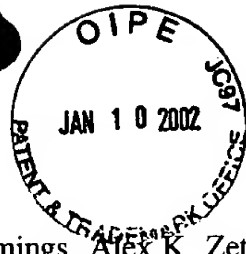
Signature: Alex K. Zettl Date: 10/15/01
Full Name of Inventor: Alex K. Zettl
Citizenship: United States of America
Residence: Kensington, California
Post Office Address: 147 Highland Blvd., Kensington, California 94708

Third Joint inventor:

Signature: Steven G. Louie Date: 10/16/01
Full Name of Inventor: Steven G. Louie
Citizenship: United States of America
Residence: Berkeley, California
Post Office Address: 909 Hilldale, Berkeley, California 94708

Fourth Joint inventor:

Signature: Marvin L. Cohen Date: 10/16/01
Full Name of Inventor: Marvin L. Cohen
Citizenship: United States of America
Residence: Piedmont, California
Post Office Address: 201 Estates Drive, Piedmont, California 94611



#4

Atty Dkt No. 6125-0001

Client No. 1B-1649

Applicants: John P. Cumings, Alex K. Zettl, Steven G. Louie, and Marvin L. Cohen

Serial or Patent No.: 09/915,196

Filed: July 24, 2001

Title: TELESCOPED MULTIWALL NANOTUBE AND MANUFACTURE THEREOF

VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS

(37 CFR 1.9(f) & 1.27(d))--NONPROFIT ORGANIZATION

I hereby declare that I am an official empowered to act on behalf of the nonprofit organization identified below:

NAME OF NONPROFIT ORGANIZATION: The Regents of the University of California

ADDRESS OF NONPROFIT ORGANIZATION: 1111 Franklin Street, 8th Floor, Oakland, California 94607

TYPE OF NONPROFIT ORGANIZATION:

- ☒ UNIVERSITY OR OTHER INSTITUTION OF HIGHER EDUCATION
- ☐ TAX EXEMPT UNDER INTERNAL REVENUE SERVICE CODE 26 USC 501(a) and 501(c)(3)
- ☐ NONPROFIT SCIENTIFIC OR EDUCATIONAL UNDER STATUTE OF STATE OF U.S.A.
(Name of State: _____)
(Citation of Statute: _____)
- ☐ WOULD QUALIFY AS TAX EXEMPT UNDER INTERNAL REVENUE SERVICE CODE
26 USC 501(a) and 501(c)(3) IF LOCATED IN THE UNITED STATES OF AMERICA
- ☐ WOULD QUALIFY AS NONPROFIT SCIENTIFIC OR EDUCATIONAL UNDER STATUTE
OF STATE OF THE UNITED STATES OF AMERICA IF LOCATED IN U.S.A.
(Name of State: _____)
(Citation of Statute: _____)

I hereby declare that the nonprofit organization identified above qualifies as a nonprofit organization as defined in 37 CFR 1.9(e) for purposes of paying reduced fees to the United States Patent and Trademark Office regarding the invention entitled: TELESCOPED MULTIWALL NANOTUBE AND MANUFACTURE THEREOF described in:

- ☒ application serial no. 09/915,196, filed July 24, 2001.

I hereby declare that rights under contract or law have been conveyed to and remain with the nonprofit organization regarding the above-identified invention.

If the rights held by the nonprofit organization are not exclusive, each individual, concern or organization having rights in the invention is listed below* and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person made the invention, or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

NAME:

ADDRESS:

☐ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☐ NONPROFIT ORGANIZATION

NAME:

ADDRESS:

☐ INDIVIDUAL ☐ SMALL BUSINESS CONCERN ☒ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

SIGNATURE

David J. Aston

DATE:

9/13/01

NAME OF PERSON SIGNING:

TITLE IN ORGANIZATION OF PERSON SIGNING:

ADDRESS OF PERSON SIGNING:

*David J. Aston
Patent Counsel
1 Cyclotron Road
Berkeley CA*